

**THE LAW OFFICE OF
JACK FITZGERALD, PC**
JACK FITZGERALD (SBN 257370)
jack@jackfitzgeraldlaw.com
TREVOR M. FLYNN (SBN 253362)
trevor@jackfitzgeraldlaw.com
MELANIE PERSINGER (SBN 275423)
melanie@jackfitzgeraldlaw.com
Hillcrest Professional Building
3636 Fourth Avenue, Suite 202
San Diego, California 92103
Phone: (619) 692-3840
Fax: (619) 362-9555

**THE LAW OFFICE OF
PAUL K. JOSEPH, PC**
PAUL K. JOSEPH (SBN 287057)
paul@pauljosephlaw.com
4125 W. Pt. Loma Blvd. No. 206
San Diego, California 92110
Phone: (619) 767-0356
Fax: (619) 331-2943

Counsel for Plaintiff and the Proposed Class

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

PRESTON JONES, on behalf of himself, all
others similarly situated, and the general
public,

Plaintiff,

v.

NUTIVA, INC.,

Defendant.

Case No: 3:16-cv-00711-HSG

**NOTICE OF MOTION AND MOTION
TO REMAND PLAINTIFF'S CLAIMS
FOR INJUNCTIVE RELIEF IF NOT
ALLOWED TO PROCEED IN THIS
COURT**

[28 U.S.C. § 1447(c)]

Date: April 21, 2016
Time: 2:00 p.m.
Place: Courtroom 10
Judge: Hon. Haywood S. Gilliam, Jr.

NOTICE OF MOTION

TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT, on April 21, 2016, at 2:00 p.m., in Courtroom 10, 19th Floor, 450 Golden Gate Avenue, San Francisco, or as soon thereafter as may be heard, plaintiff Preston Jones will, and hereby does move the Court, the Honorable Haywood S. Gilliam, Jr. presiding, for an Order, pursuant to 28 U.S.C. § 1447(c), remanding plaintiff's claims for injunctive relief if the Court finds, in response to Nutiva's Motion for Judgment on the Pleadings (Dkt. No. 18), that plaintiff lacks standing to proceed on those claims in federal court. This Motion is based on this Notice of Motion, the below Memorandum of Points & Authorities, all pleadings and proceedings had thus far, and all written or oral argument offered in support of, or in opposition to the Motion.

STATEMENT OF RELIEF SOUGHT

Nutiva has moved for judgment on the pleadings, including as to plaintiff's claims for injunctive relief, based on the assertion that plaintiff lacks standing under Article III of the Constitution to seek such relief. If the Court agrees with Nutiva, plaintiff respectfully requests the Court remand plaintiff's injunctive relief claims to state court.

MEMORANDUM OF POINTS & AUTHORITIES

I. STATEMENT OF THE ISSUE TO BE DECIDED

Whether, if the Court finds that plaintiff may not pursue claims for injunctive relief in this federal action, the Court should remand those claims to state court, rather than dismiss them.

II. RELEVANT FACTS & ARGUMENT

Plaintiff filed this action in state court seeking monetary and injunctive relief. (*See* Dkt. No. 2-1, Compl.) Nutiva removed the action then moved for judgment on the pleadings, in

part on the basis that plaintiff lacks Article III standing to pursue his claims for injunctive relief in this false advertising case. (*See* Dkt. No. 18, Nutiva Mot. at 10-11.)

This Court recently acknowledged a split of authority on this issue. *See Gallagher v. Chipotle Mexican Grill, Inc.*, 2016 WL 454083, at *3 n.3 (N.D. Cal. Feb. 5, 2016) (Gilliam, J.). Plaintiff recognizes that the Court has adopted the position that a plaintiff who is aware of false advertising or without an intent to repurchase the product lacks Article III standing to pursue injunctive relief. *See id.*, at *3 (quoting *Davidson v. Kimberly-Clark Corp.*, 2014 WL 7247398, at *4 (N.D. Cal. Dec. 19, 2014)).

Because “[i]njunctive relief is an important remedy under California’s consumer protection laws,” *Machlan v. Proctor & Gamble Co.*, 77 F. Supp. 3d 954, 961 (N.D. Cal. Jan. 7, 2015) (citation omitted), unless plaintiff’s injunctive relief claims are to proceed in this federal litigation,¹ plaintiff respectfully requests that the Court remand, rather than dismiss, plaintiff’s claims for injunctive relief.² *See id.*, at 959-62 (remanding to state court those “portions of plaintiff’s claims that seek injunctive relief under the UCL, FAL and CLRA” because “[p]rinciples of fairness and comity [] strongly support remand rather than dismissal”).

Dated: March 14, 2016

Respectfully submitted,

/s/ Jack Fitzgerald

THE LAW OFFICE OF JACK FITZGERALD, PC

JACK FITZGERALD

jack@jackfitzgeraldlaw.com

TREVOR M. FLYNN

trevor@jackfitzgeraldlaw.com

MELANIE PERSINGER

¹ While recognizing the Court’s position on the matter as stated in *Gallagher*, respectfully, plaintiff will likely oppose this portion of Nutiva’s motion, to present arguments the Court may not have previously been presented, and to preserve his appellate rights on this undecided issue of law.

² Plaintiff brings injunctive relief claims under the Unfair Competition Law, False Advertising Law, and Consumers Legal Remedies Act. (*See* Dkt. No. 2-1, Orr Decl. Ex. 1, Compl. ¶¶ 128, 130, 139-40, 145.)

melanie@jackfitzgeraldlaw.com

Hillcrest Professional Building

3636 Fourth Avenue, Suite 202

San Diego, California 92103

Phone: (619) 692-3840

Fax: (619) 362-9555

THE LAW OFFICE OF PAUL K. JOSEPH, PC

PAUL K. JOSEPH

paul@pauljosephlaw.com

4125 W. Point Loma Blvd. No. 206

San Diego, California 92110

Phone: (619) 767-0356

Fax: (619) 331-2943

Attorneys for Plaintiff and the Proposed Class

CERTIFICATE OF SERVICE

I hereby certify that on March 14, 2016, I served the foregoing **NOTICE OF MOTION AND MOTION TO REMAND PLAINTIFF'S CLAIMS FOR INJUNCTIVE RELIEF IF NOT ALLOWED TO PROCEED IN THIS COURT** on counsel of record for all parties in this action, by notice of electronic filing, which was automatically generated by the Court's CM/ECF system at the time the document was filed with the Court.

Dated: March 14, 2016

/s/ Jack Fitzgerald

Jack Fitzgerald